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REMARKS

Applicant wishes to thank the Examiner for the attention accorded to the instant application.

The Commissioner is hereby authorized to charge the Terminal Disclaimer Fee set forth in 37 CFR 1.20(d) of \$55 to Deposit Account No. 501648.

It is not believed that any additional fees are due, however, the Commissioner is hereby authorized to charge any deficiencies or credit any overpayment to Deposit Account No. 501468.

I. Nonstatutory Double Patenting Rejection

The Examiner has rejected claims 1, 3, 9, 10, 13, 17, 28-31, 68, 69, 79 and 102-112 under the judicially created doctrine of obviousness type double patenting as being unpatentable over various claims of U.S. Patent No. 5,940,150. Applicant has enclosed a terminal disclaimer in compliance with 37 CFR 1.321(c) disclaimer to obviate the double patenting rejections. Accordingly, early notice of allowance is respectfully requested.

II. Claim Rejections – 35 U.S.C. § 103

The Examiner has rejected all of the pending claims under 35 U.S.C. § 103(a) as being unpatentable primarily over U.S. Patent No. 5,686,979 to Weber et al. ("Weber") in view of U.S. Patent No. 5,528,393 to Sharp et al. ("Sharp"). Some of the pending claims have also been rejected in further view of various references including U.S. Patent No. 5,336,965 to Meyer et al. ("Meyer") and U.S. Patent No. 5,239,406 to Lynam ("Lynam").

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Primarily, the Examiner states that Weber discloses an electro-optical glazing structure comprising electro-optical glazing panel of laminated construction having first and second optical states of operations (transmission and reflection). The Examiner states that Sharp disclose the split-element liquid crystal tunable optical filter comprising a first electrically-active/tunable liquid crystal electromagnetic radiation polarizing panel, a second electrically-active/tunable liquid crystal electromagnetic radiation polarizing panel and, an electrically-passive π -phase retardation panel interposed between the first and second electrically-active liquid crystal electromagnetic radiation polarizing panels wherein the liquid crystal is cholestric liquid crystal CLC.

The Examiner's rejections of all pending claims are respectfully traversed. Independent claims 1, 13, 68 and 102 have been amended to more particularly point out and distinctly claim the subject matter which is regarded as the invention. Particularly the claims have been amended to recite means for applying control voltages to the retardation panel so that the optical state of operation can be controlled. Such a control means is not disclosed by either Sharp or Weber. There is no teaching or suggestion in Sharp or Weber to control the tunable filters with a control voltage. Sharp merely teaches that the tunable color filters can be arranged in stages to arrive at the proper range of filtering. Moreover, the tunable color filters of Sharp are discrete. The filters must be staged to get the desired filtering.

Additionally, the Examiner has not pointed to any motivational statements in any of the cited art for combinations thereof. When determining the patentability of a claimed

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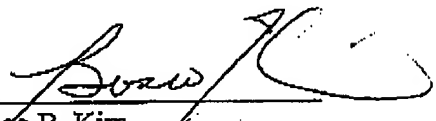
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invention which combines two known elements, the question is whether there is something in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination. WMS Gaming, Inc. v. International Game Technology, 184 F.3d 1339, 1355 (Fed. Cir. 1999). Additionally, even assuming *arguendo* that there was motivation to combine the split element tunable filter of Sharp with the reflective and transmissive panels of Weber, the combination would not yield the present invention as recited in the independent claims of the present application.

Accordingly, Applicant believes that all of the independent claims are now in a condition for allowance. The dependent claims, which all depend from the amended independent claims, are similarly now in a condition for allowance. Early notice to that effect is earnestly solicited.

Respectfully submitted,

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